BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

NANCY POTTER	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,045,420
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Respondent requested review of the September 26, 2012, Award by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on February 20, 2013.

APPEARANCES

Timothy M. Alvarez, of Kansas City, Kansas, appeared for the claimant. Nathan D. Burghart, of Lawrence, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found, from the record, that claimant's testimony could not be taken at face value. He opined that her testimony about her level of mental functioning was not accurate, even though the inaccuracy was probably owed to her psychological makeup rather than a conscious attempt to deceive. The ALJ also found claimant to have some credible deficit in mental processing involving her working memory. Although claimant suffered only a mild deficit, there was no evidence of such deficit prior to the work accident. Finally, the ALJ found, from every medical expert, that

claimant has a diagnosis of some form of mild traumatic brain injury or concussion disorder, but there was no measurable physical evidence of a concussion or other injury to the brain.

The ALJ went on to order respondent and its insurance carrier to pay all authorized medical expenses related to treatment of the claimant's injuries subject to the Kansas Workers Compensation Schedule of Medical Fees. Respondent and its insurance carrier were ordered to reimburse claimant $137.00 for outstanding authorized medical expenses and $268.29 for outstanding unauthorized medical expenses. Respondent and its insurance carrier were ordered to pay the claimant 51.71 weeks of temporary total disability compensation (TTD) at the rate of $426.31 per week, for a total of $22,044.49, and permanent partial disability benefits at the rate of $426.31 per week, for a 14 percent impairment to the whole person, followed by a 50 percent permanent partial general (work) disability, for a total award of $63,460.51, which is due and owing and ordered paid in one lump sum, less amounts previously paid. The remaining permanent partial general disability benefits were ordered paid until the total amount expended for TTD and permanent partial general disability reaches the statutory maximum of $100,000.

Finally, the ALJ found there was no indication of a need for ongoing medical treatment related to the claimant's injury and elected not to address future medical expenses. If a claim for post-award medical benefits should arise and cannot be resolved by agreement, the issue may be addressed by the post-award medical procedures contained in K.S.A. 44-510k.

Respondent argues that the Board should find that claimant did not suffer a traumatic brain injury as a result of her work accident on March 1, 2009, and that her psychological problems are not directly traceable to her work accident and are not compensable. The respondent requests review of the following:

1. Whether claimant suffered a traumatic brain injury arising out of and in the course of her employment on the date alleged. At oral argument to the Board, respondent acknowledged that claimant suffered an injury by accident on March 1, 2009. Respondent disputes the nature and extent of that physical injury.

2. Are claimant's alleged psychological problems directly traceable and/or causally related to the work injury alleged herein?

3. Claimant’s entitlement to authorized medical expenses.

4. Claimant’s entitlement to unauthorized medical expenses.

Claimant argues that the Award should be modified to reflect that she is permanently and totally disabled. In the alternative, claimant contends the Award should be affirmed, as the overwhelming majority of the credible evidence proves claimant’s post-

traumatic psychological conditions are directly related to her physical injury. Claimant also contends that the Board should affirm the Award as to all other issues including the payment and/or reimbursement of medical bills.

FINDINGS OF FACT

In March 2009, claimant worked for Rainbow Mental Health Hospital, a psychiatric hospital for the State of Kansas. Claimant had been working at the hospital for four years as a registered nurse. She was the charge nurse responsible for managing all admissions and discharges and the staff on the unit and in the hospital. Claimant worked 20 hours a week on a PRN basis. She was told to keep her work hours at 20, so that the hospital wouldn't have to pay her benefits.

Claimant's educational background includes a Bachelor of Arts in Linguistics from the University of Kansas, a Master's in Business Administration from Florida International University, and a Bachelor of Science in Nursing from the University of Kansas Medical Center.

On March 1, 2009, claimant slipped and fell on an icy sidewalk on her way back from the dedicated staff restroom, which was in the administration building. Claimant's knees, stomach and right cheekbone came in contact with the sidewalk. Claimant worked the night shift, 11:00 p.m. to 7:00 a.m. She testified that she fell at 5:45 a.m. She testified that she was in a lot of pain after she fell and laid on the ground for a little bit before she got up and made her way back to her unit. Claimant didn't notice anything wrong with her mental processes until she was filling out paperwork to go to the ER. She couldn't remember her date of birth and she couldn't remember where or how to get to the ER, even though she had been there before.

Claimant was examined at the ER, no fractures were found and she was sent home with Ibuprofen. Claimant returned to work and, as the days went on, she noticed difficulty with her work, in particular her ability to communicate with her supervisor and co-workers. Claimant decreased her work hours thinking that would help, but it didn't. She was sent to Dr. Bono, whom she met with once a week for a battery of treatment and diagnostic testing. Dr. Bono sent claimant for an x-ray and an MRI and for speech and occupational therapy. The x-ray and MRI showed so signs of bleeding or lesions.

Claimant was been unable to return to work and her employment was terminated on July 6, 2009. She was told if her condition improved she could reapply. Claimant testified that at the time of her accident she was also working for her family's boat dealership, Southwest Marine Company, doing bookkeeping and office work. She worked approximately 46 hours a week. She stopped working for the boat dealership at the end of 2009. She sold her interest in the business in February 2010.

Claimant testified that she can no longer work as a nurse because she can't multitask or do math to calculate medication dosages. She can no longer make quick decisions and can't answer direct questions. She also gets irritated very quickly and flies off the handle. She also testified to having problems with her balance, i.e., she falls over a lot, hits her arms on doorjambs and knocks things over. She has trouble using her hands and is easily distracted.

Claimant testified that she has tried to retrain herself, but she has a problem remembering how to do things and dealing with the public. Her other physical injuries have healed, except for spasms she still sometimes gets in her neck. Claimant testified that it is difficult for her to drive because she gets turned around and lost and she no longer cooks for herself because of her attention issues, which cause her to burn things and forget to turn off the oven.

Claimant met with board certified psychiatrist and neurologist, Gordon R. Kelley, M.D., on April 28, 2009, for a neurologic consultation in regard to her complaints of memory loss and dizziness after her March 1, 2009, accident. Claimant reported problems with verbal, cognitive and mathematical skills, poor short-term and long-term memory, irritability, lightheadedness and dizziness with nausea. Dr. Kelley examined claimant and opined that claimant had postconcussion syndrome, with no objective abnormalities. He opined that claimant's prognosis for improvement was good.

Dr. Kelley recommended an electroencephalogram to look for focal slowing, gave her a prescription for Meclizine and encouraged claimant to get out for regular walks to increase the time she would be able to work. His opinion continued to be that claimant was temporarily unable to work because of her mental fatigue, concentration and irritability.

Claimant was seen for followup on June 12, 2009. Claimant reported she was no better from the last visit and was no longer going for physical and occupational therapy. Claimant complained of problems with her concentration, memory and depth perception. Dr. Kelley noted claimant was well organized in expressing her complaints. Dr. Kelley opined that claimant's complaints centered on mental slowness as a result of the March 1, 2009, fall. At that point he was not convinced claimant had organic disease. But, if she did, it was most likely due to post-traumatic depression. He determined there appeared to be a degree of symptom amplification and possibly functional overlay. Claimant was given a prescription for Lexapro. An assessment with a neuropsychiatrist was recommended. Dr. Kelley did not feel claimant was ready to return to work at that time.

Claimant met with Dr. Kelley again on July 8, 2009. There was no change in her condition since the visit in June. She did add a complaint about the dexterity in her hands and how she seemed more clumsy. Claimant wanted to stop taking the Lexapro, as it made her more disoriented and confused. Claimant was prescribed Amitriptyline. Dr. Kelley continued to find claimant was not able to work pending review of Dr. Price's neuropsych evaluation report.

Upon review of Dr. Price's report, Dr. Kelley concluded claimant's problem was not so much postconcussion syndrome as it is due to emotional distress associated adjustment issues. Dr. Kelley opined that claimant may have met maximum medical improvement, but from a neurologic standpoint, when he last saw claimant, she had significant complaints regarding cognition, memory and depth perception. He found claimant's main handicaps to be psychological/psychiatric.

Dr. Kelley stated that claimant's symptoms and complaints are in her head, and fall more in the realm of psychiatric disease rather than organic neurologic disease. He found no reason to suggest that claimant had an impairment from a neurologic standpoint.

Claimant met with board certified neuropsychologist Patrick Caffrey, Ph.D., for a neuropsychological evaluation on February 11, 2010, to address causation of claimant's symptoms. Claimant reported the following concerns: problems with her memory, mainly short-term; difficulty processing, trouble figuring things out; verbal problems, such as saying the wrong word; poor spelling; can't type fast; speaks gibberish; visual scanning, missing things; indecision, such as not knowing the answer to a simple question; balance problems with some falls; leaving the stove on or leaving food out to spoil; dropping packages, or having a hard time opening packages; inability to remember family member and coworker names; gets lost easily; easily distracted; misplaces belongings and forgets to take trash out or to close the garage door; clumsiness; change in temperament; neck locks up; chronic pain and headaches.

Dr. Caffrey noted that claimant was not experiencing pain at the time of this evaluation, but claimant stated that at its worst her headaches were 9 on a scale of 1-10 and her neck pain 10 out of 10. Claimant denied any history of depression and anxiety.

Dr. Caffrey conducted a series of tests on claimant and concluded claimant's fall did not cause all of her symptoms. Claimant does have perceived symptoms that become severe in her mind, because of a tendency to ruminate and to attribute every slight lapse or mistake to the March 1, 2009, injury. He found claimant to have limited ability to use insight. She was resistant to any suggestion that her symptoms and problems related to anything other than the March 1, 2009, concussion. Her neurological tests were all normal and her ongoing complaints manifested because of a baseline condition of obsessive compulsive personality disorder. He found claimant capable of working in nursing without restrictions. Claimant's issues are fueled by anxiety, due to the obsessive compulsive disorder.

Dr. Caffrey diagnosed claimant with cognitive disorder NOS, post concussional disorder, resolving; adjustment disorder with mixed anxiety and depressed mood; obsessive compulsive personality disorder; concussion; psychosocial and environmental problems, self-perceived limitations regarding her capacity to meet the demands of her nursing job and low self confidence.

Dr. Caffrey believed claimant's problems were more psychiatric/psychological than medical. He did not feel that these problems could be directly traced to the fall on March 1, 2009. In his opinion, claimant had returned to her preexisting level of functioning before the fall. Dr. Caffrey found no objective evidence to show claimant suffered any loss of function or impairment as a result of the work injury. He doesn't believe claimant is in need of any specific treatment connected to the accident, but might need some psychological treatment for her other problems.

Claimant met with board certified neurologist/psychiatrist Fernando M. Egea, M.D., for an evaluation on April 20, 2010. Dr. Egea identified claimant as an individual who sustained injuries to her head/brain and neck in a work-related accident on March 1, 2009. Claimant reported that, since the accident, she has had difficulty with her ability to concentrate and maintain her attention span, memorize and recall and was frustrated about her mental dysfunction which left her with depression and anxiety. She also had headaches, cervical pain and cervical muscle spasms.

Dr. Egea examined claimant and found her to have pain, stiffness and limitations in range of motion in her neck; headaches; difficultly with memory recall, concentration, depression and anxiety. He opined that this is what one sees in someone with a traumatic brain injury. He went on to state that, within a reasonable degree of medical certainty, the direct, proximate and prevailing factor in causing claimant's traumatic myofascitis with myofascial pain syndrome of the cervical spine and mild traumatic brain syndrome with disturbances of the mental status and integrative functioning, were the injuries sustained while claimant was in the normal course and scope of her employment with respondent on March 1, 2009.

Dr. Egea felt that future medical treatment should be left open as claimant's injuries will, in the future, require her to have psychiatric treatment in the form of cognitive therapy and medication with a reasonable projected cost of $6,000 to $15,000. Claimant was assigned a 14 percent permanent partial whole body functional impairment for mild traumatic brain syndrome with disturbances mental status and integrative functioning and a 5 percent permanent functional impairment for a cervicothoracic impairment, for a total whole body functional impairment of 18 percent, pursuant to the AMA Guides, 4th ed.

On August 16, 2010, Dr. Egea provided an addendum to his April 20, 2010, report, in which he provided claimant with restrictions. He recommended claimant limit activities that do not requires the use of recent event memory and ability to recall, calculate or memorize; avoid lifting or carrying over 25 pounds and frequent lifting or carrying over 10 pounds. He went on to find that claimant was not able to compete in the open labor market and is totally and permanently disabled due to her mental disability and depression. He opined claimant suffers from a compulsive-obsessive disorder which was present prior to her injury. Dr. Egea opined that if claimant were able to find a job within her restrictions, she could perform the job, but he wouldn't hire her for his office.

Claimant met with Adrian P. Jackson, M.D., a board certified orthopedic surgeon, for evaluation and consultation on September 22, 2010. Claimant had complaints of neck pain and headaches with ongoing cognitive issues. Dr. Jackson testified that claimant's cognitive issues quickly became the focus of the visit, over the cervical complaints. Dr. Jackson opined that, based on his examination, he didn't believe claimant had any cervical spine problems and he was not convinced of any structural spinal issues since the injury. He was unable to reach a conclusion regarding claimant's cognitive functions because he only met with claimant on the one occasion. He did note that at the time of the examination, claimant was emotional and cried off and on throughout the examination.

Dr. Jackson did not feel claimant had a cervical or orthopedic impairment and declined to recommend any restrictions or medical treatment ongoing or in the future. He was not clear why a rating was issued for a body part that has not undergone treatment from this work-related injury.

Claimant has been treated by Leif E. Leaf, Ph.D., on monthly basis since November 24, 2010, for supportive counseling and for adjustment issues related to her accident on March 1, 2009. This counseling is offered free of charge through Lenexa Baptist Church.

On June 15, 2011, Dr. Leaf wrote that he found no evidence of obsessive-compulsive disorder (OCD) or any other mental impairment prior to the accident. He noted that claimant's lack of mental flexibility, over corrections and repetitive behavior are consistent with traumatic brain injury. Dr. Leaf opined that claimant's injury was a mild to moderate closed injury that caused claimant to have a mood disorder. He indicated that his cause and effect of claimant's traumatic brain injury is different from what the other doctors found.

Dr. Leaf diagnosed claimant with continued anxiety, decreased abstract reasoning, poor social judgment and physical limitations. He recommended she continue to be seen for counseling on a monthly basis.

Dr. Leaf indicated that he would find it significant for someone to be able to keep detailed records of the problems they had if they had a mild traumatic brain injury. His reasoning differentiated between a mild brain injury as opposed to a severe brain injury where the person may not have the cognitive ability to keep detailed records. He went on to reason that a mild brain injury allows a person to know something is not working, write it down and obsess about it. This, in his opinion, is what claimant is doing. Dr. Leaf opined that claimant was improving and seemed a little more relaxed.

According to Dr. Leaf, claimant's brain will never completely heal, but she can become more functional. Dr. Leaf found claimant to have moderate limitations in the area of social functioning. He determined that claimant's activities of daily living are mildly impaired due to her obsessiveness over repeating things and forgetting to do things. He

found her concentration to be mild to moderate in terms of her focus. Claimant is not confident in her abilities and doesn't feel like she can succeed, where she did prior to her injury. He also testified that claimant test results were typical of an average person.

In terms of impairment, Dr. Leaf indicated that claimant has a 15 percent impairment, pursuant to the AMA Guides, 4th ed. Dr. Leaf is not trained in treating physical injuries. He encouraged claimant to volunteer helping senior citizens to include positive activity in her life.

Claimant was referred by the ALJ to board certified psychiatrist Guillermo R. Ibarra, M.D., for an Independent Psychiatric Evaluation, on September 16, 2011. Dr. Ibarra stated in his September 20, 2011, report that, despite claimant's complaints of impairment of dexterity; balance; attentiveness; concentration; memory; language; processing speed; strength; mood; frustration tolerance and emotional control, none of her several medical and psychological evaluations since the accident have shown severe cognitive, motoric or psychological impairment.

Dr. Ibarra opined that claimant's social behavior was normal, she was friendly, spontaneous, cooperative and a good historian. He found she had no impairment of consciousness, attentiveness, concentration or vigilance, she maintained eye contact, had no impairment of speech, language, memory, fund of knowledge or praxis. He thought her speech was fluent, well articulated and normal in pitch, rate, rhythm, volume control, prosody and pragmatics. Her thought progression was linear, purposeful and goal orientated, and there was no evidence of psychosis.

Claimant was able to understand, retain and carry out simple and complex tasks with no impediment from a psychiatric condition; had moderate limitations in her ability to sustain attention and concentration for extended periods; had moderate limitations in her ability to adapt emotionally to changes and to tolerate normal pressures of competitive employment; was aware of normal hazards and looked after her own safety; and had moderate limitations in her ability to become involved in significant gainful activity attributable to a psychiatric condition.

Dr. Ibarra found no evidence to suggest claimant was deliberately misrepresenting her disabilities. He felt claimant may have some bona fide cognitive dysfunction that is flooded by representations with no medical basis. He determined that, since testing provided no medical, physical or neurological explanation for claimant's problems, the reason must be psychological.

Dr. Ibarra submitted an addendum report on May 7, 2012, assigning claimant impairment ratings based on the second edition of the AMA *Guides.*[1] He found claimant

[1] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*.

to have an overall impairment of 25 percent. Dr. Ibarra was not able to come to the same conclusion utilizing the fourth edition of the AMA *Guides*.

Dr. Ibarra diagnosed claimant with a conversion disorder, which is strictly a psychological condition with no physical basis. This diagnosis can only be made by exclusion. He indicated that claimant believes in her head that she has these symptoms and complaints even though, in reality, she doesn't have them. He was not able to indicate for certain that claimant's March 1, 2009, fall had anything to do with claimant's disorder.

Dr. Ibarra found claimant had mild traumatic brain injury and the prognosis for recovery is very good. Claimant's unfounded representations likely have an etiology akin to conversion disorders, which are non-intentional, non-psychological manifestations that do not quite make medical sense and whose origins are in psychological aspect of the individual's awareness. He found claimant's social, occupational and academic history contrasts with her life after the accident.

He opined that claimant's allegations are credible from a psychiatric standpoint and it is slightly more likely than not that claimant is impaired due to mal-adaptation to the accident and its aftermath. He also opined that if claimant was dazed after she fell and had some alteration of consciousness, that would be an indication of traumatic brain injury.

PRINCIPLES OF LAW AND ANALYSIS

The Board finds the analysis and conclusions reached by the ALJ in the Award to be well thought out and significantly detailed. The Board adopts that analysis and those conclusions of the ALJ in toto, and incorporates that analysis and those conclusions into this Award as its own. The Award of the ALJ is affirmed in all respects.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated September 26, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2013.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
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Kenneth J. Hursh, Administrative Law Judge